

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT LESANE,

Petitioner,

v.

Case Number 08-12828
Honorable David M. Lawson

BLAINE LAFLER,

Respondent.

**ORDER GRANTING THE PETITIONER'S MOTION TO STRIKE AND
DENYING THE PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

The petitioner, Scott Lesane, presently confined at the Carson City Correctional Facility in Carson City, Michigan, has filed a *pro se* application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petitioner was convicted in Wayne County, Michigan of second-degree murder, assault with intent to commit great bodily harm less than murder, felon in possession of a firearm, and possession of a firearm during the commission of a felony. He was sentenced to imprisonment for minimum terms ranging from two to thirty years. The petitioner alleges that he is in custody in violation of his rights under the Sixth and Fourteenth Amendments to the U.S. Constitution. The respondent filed an answer to the petition, asserting that the petitioner's claims lack merit, are not cognizable on habeas review, or are procedurally defaulted. The matter is before the Court on the petitioner's motion to strike his habeas petition and to allow filing of the revised habeas petition and the petitioner's motion for summary judgment, which seeks to compel the Court to adjudicate the petitioner's motion to strike.

In his initial habeas petition, filed on July 2, 2008, the petitioner asserts the following four claims:

- I. The trial court erroneously denied the petitioner's motion for a directed verdict of acquittal;
- II. The trial counsel was ineffective for failing to request a jury instruction on voluntary manslaughter;
- III. The prosecutor's opening statement and closing arguments deprived the petitioner of a fair trial; and
- IV. The trial court's jury instructions deprived the petitioner of a fair trial.

In his motion to strike, the petitioner seeks to strike his initial habeas petition and to substitute in its place a revised petition, which makes the following single argument:

The state court[s] were incorrect when they found that there wasn't adequate provocation to support a request for manslaughter and counsel was ineffective for not doing so.

- A. Adequate provocation was apparent on the record at preliminary examination and Petitioner's trial.
- B. Counsel was ineffective for not requesting the lesser included offense of manslaughter.

The Court will accept and consider the petitioner's revised petition in place of his initial habeas corpus petition and supporting brief. The amended habeas petition will supercede the initial pleading. *B & H Med., LLC v. ABP Admin., Inc.*, 526 F.3d 257, 268 n.8 (6th Cir. 2008) (citing *Drake v. City of Detroit*, 266 F. App'x. 444, 448 (6th Cir. 2008)).

Accordingly, it is **ORDERED** that the petitioner's motion to strike [dkt #5] is **GRANTED**.

It is further **ORDERED** that the petitioner's motion for summary judgment [dkt # 7] is **DENIED**.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: May 18, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on May 18, 2009.

s/Lisa M. Ware
LISA M. WARE